

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

DONNA K. SOUTTER, et al. :
 :
 :
Plaintiffs :
v. : Civil Action
 : No. 3:10CV00107
EQUIFAX INFORMATION SERVICES, LLC :
 : July 15, 2010
Defendant. :

COMPLETE TRANSCRIPT OF MOTION TO CHANGE VENUE
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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DIANE J. DAFFRON, RPR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

1 (The proceedings in this matter commenced at
2 3:00 p.m.)

3
4 THE CLERK: Civil Action No. 3:10CV00107,
5 Donna K. Soutter, for herself and on behalf of all
6 others similarly situated, et al. v. Equifax
7 Information Services, LLC.

8 Mr. Leonard A. Bennett and Mr. Matthew J.
9 Erausquin represent the plaintiffs. Mr. Barry Goheen
10 represents the defendant.

11 Are counsel ready to proceed?

12 MR. BENNETT: The plaintiffs are, Your Honor.

13 MR. GOHEEN: Yes, Your Honor.

14 THE COURT: All right. It's a motion to
15 transfer.

16 Mr. Goheen, you're up. Just to clear the
17 decks, the motion relates to plaintiffs Soutter and
18 Webb. Webb's claims, according to the reply brief,
19 have been settled, and you-all want to sever this
20 case, I guess that's Counts Two and Three of the
21 amended complaint, and transfer it to Pennsylvania.
22 Is that right?

23 MR. GOHEEN: That's correct, Your Honor. I
24 think Mr. Bennett and I explained this a couple months
25 ago. That was one of three statewide class actions

1 that were filed.

2 The lead action, the original action, was
3 pending in the Eastern District of Pennsylvania before
4 Judge Brody in Philadelphia. That case settled and
5 motions have been filed, including the one that
6 Mr. Bennett filed yesterday, as well as the one in the
7 other jurisdiction to transfer and get all three
8 before Judge Brody so she can entertain the parties'
9 petition for settlement on a classwide basis.

10 THE COURT: And you're in agreement with that
11 motion?

12 MR. GOHEEN: I am, Your Honor. Equifax is.

13 THE COURT: Is there an order tendered?

14 MR. BENNETT: There is not, Judge, but I will
15 get an order immediately when I return to the office.

16 THE COURT: Well, I think I will just recite
17 that with the agreement of counsel made in open court
18 today to the motion that it is hereby ordered that the
19 order is granted and the complaint by Webb -- is that
20 Counts Two and Three?

21 MR. BENNETT: Yes, Your Honor.

22 THE COURT: -- of the first amended class
23 complaint shall be severed and transferred to the
24 Eastern District of Pennsylvania. Do you have the
25 style of the case in the motion?

1 MR. BENNETT: I do, Judge.

2 THE COURT: To that case. And the clerk will
3 take care of it.

4 Do you have an order?

5 MR. GOHEEN: I've just got the motion. It
6 was filed yesterday if the Court needs the style of
7 the case.

8 THE COURT: No. We'll have it. If it's been
9 filed, it's in the records and we can get to it.

10 MR. BENNETT: Yes, Your Honor.

11 MR. GOHEEN: Yes, Your Honor.

12 THE COURT: Now we're dealing with the motion
13 to transfer Ms. Soutter's case.

14 MR. BENNETT: Your Honor, may I interrupt?

15 Should I file an order or did Your Honor just
16 explain the clerk will file an order?

17 THE COURT: We'll prepare an order.

18 MR. BENNETT: Thank you, Judge.

19 MR. GOHEEN: Thank you, Your Honor.

20 May it please the Court, Barry Goheen
21 representing Equifax Information Services. And just
22 for the record, co-counsel, Mr. Montgomery, was
23 excused from today's proceedings, as the Court might
24 recall, but I did want to make that clear for the
25 record.

1 THE COURT: Yes.

2 MR. GOHEEN: I trust the Court has read our
3 papers, so I don't want to regurgitate what we have
4 put into our papers, but I do want to make a couple
5 points for Your Honor's benefit that we believe merit
6 particular emphasis.

7 First, I know this is not necessarily a
8 fact-finding type of exercise, but we do believe it's
9 significant that it's now undisputed that neither
10 party resides in this district or division. The
11 affidavit of Ms. Soutter says that she resides in
12 Culpepper, which is in the Western District. As the
13 Court is aware, Equifax is headquartered in Georgia.

14 We respectfully suggest that the policies
15 underlying Section 1404(a) are not fair and we would
16 suggest are impaired if we simply allow plaintiffs to
17 file wherever they want to file, and then fall back on
18 the old saw that, Well, the plaintiffs' choice of
19 forum is paramount and should not be disturbed. We
20 don't believe that to be the law. Where, as here, the
21 plaintiff chooses a forum that is not her home forum.

22 THE COURT: That is pretty well settled, I
23 think. The deference of the plaintiff's choice of
24 forum is not due the deference. Let me start again.
25 The plaintiff's choice of forum is not due the

1 deference it ordinarily is due when the choice of
2 forum is not the plaintiff's home forum.

3 MR. GOHEEN: Yes, Your Honor. We believe
4 that to be --

5 THE COURT: I think that's settled. At least
6 here it is.

7 On the other hand, it's not that there is no
8 connection here at all, is there? The judgment issues
9 have revolved around judgments obtained in and issued
10 by the Circuit Court of the City of Richmond, don't
11 they?

12 MR. GOHEEN: Yes, Your Honor. The judgment
13 was obtained, according to Ms. Soutter's affidavit, it
14 looks like based on Equifax's investigation to date
15 that appears to be correct as well. She had a
16 judgment against her in the General District Court
17 here in Richmond. It looks like when we look at --

18 THE COURT: How did they get jurisdiction
19 over her here in that case? Did she live here?

20 MR. GOHEEN: I'm not familiar with that, Your
21 Honor. Perhaps Mr. Bennett does. I'm not familiar
22 with how that jurisdiction and how that judgment came
23 to be entered against Ms. Soutter. I'm sure we'll
24 find that out in due course in discovery in the case,
25 though.

1 Actually, procedurally, it sort of tracks
2 another case Mr. Bennett filed earlier this year in
3 this court. It was a statewide class action in
4 Quigley. In that case, the named plaintiff lived in
5 Alexandria. We moved to transfer that, and there
6 actually was a consent order issued to Your Honor, who
7 then assigned it, and that case went over. So we're a
8 little bit surprised that there's even pushback on
9 this motion.

10 But I will say something -- Mr. Bennett said
11 something when we had our status conference in May.
12 He said something -- I'm paraphrasing now. It was
13 something like, To its credit, Equifax did not move to
14 transfer to the Northern District of Georgia. And
15 that's true. We didn't make that. Quite candidly, we
16 believe we could have, and it would have been a well
17 taken motion under the theory that when the plaintiff
18 decides to sue a division in a district where neither
19 the plaintiff nor Equifax resides, then the plaintiff
20 essentially has chosen a forum that is inconvenient
21 for both parties.

22 We think the law is clear that the case
23 should be venued in a forum that's at least convenient
24 for one of the parties, but we didn't try to get it
25 moved to Georgia even though we had a case last year

1 in Philadelphia where a nonresident plaintiff sued
2 Equifax. We did make a motion to transfer that to the
3 Northern District of Georgia. It was granted. So we
4 think that would have been a well-grounded motion.
5 Especially, with regard to one of the key third party
6 witnesses. I think we talked about this in May as
7 well, which was ChoicePoint, which is now LexisNexis,
8 and one of their key witnesses is in Atlanta as well.

9 We're not seeking that. We're only seeking
10 to have the case transferred to the plaintiff's home
11 venue. In fact, there was an interesting case. This
12 was subsequent to the briefing that came out of the
13 Eastern District of Pennsylvania. It was a class
14 action under the FCRA. It didn't involve Equifax or
15 as far as I know any of the parties or counsel in this
16 case, but the defendant company was headquartered in
17 Oklahoma and sought transfer to Oklahoma. Even though
18 in that case the plaintiff lived in the district, in
19 Philadelphia, the Court granted the motion and
20 transferred the case to Oklahoma anyway and held that
21 in cases brought under the FCRA, the primary situs of
22 activity, such as relevant documents and witnesses,
23 etc., typically is the forum where the defendant is
24 headquartered.

25 So we believe that those principles would not

1 only support the transfer to Equifax, we think it
2 certainly supports transfer to at least the
3 plaintiff's home district. We believe that Equifax
4 and the plaintiff, and jurors, we don't believe the
5 Gulf Oil v. Gilbert case that we cited in our papers
6 where the Supreme Court said jurors should not be
7 burdened with jury duty to adjudicate a case without
8 significant connection to the forum we believe
9 supports the notion that this case should at least be
10 venued where at least one of the named parties
11 resides.

12 We believe, in fairness, not seeking to
13 transfer to the Northern District of Georgia, that
14 that place should be the Western District of Virginia
15 where this named plaintiff resides. Therefore, we ask
16 that the Court grant our motion and transfer the case
17 to the United States District Court for the Western
18 District of Virginia. Thank you, Your Honor.

19 THE COURT: Mr. Bennett.

20 MR. BENNETT: May it please the Court. In
21 answer to your question that you posed as to how to
22 obtain jurisdiction. The judgment was vacated because
23 the Virginia Credit Union located here in Richmond
24 sued my client didn't have jurisdiction over my
25 client. As I understand, it was then vacated.

1 Although that was, of course, never -- termination of
2 judgment continued within her credit report.

3 The issue that we are facing, originally the
4 brief was transferred to Roanoke. Upon the settlement
5 of the Webb case, and I was as much a bystander as a
6 participant in the settlement in which Mr. Goheen was
7 lead for Equifax, Roanoke became an odd choice given
8 that there was no connection at all to Roanoke with
9 Webb gone, and thus the reply brief, which is contrary
10 to the motion. I mean, technically, there wasn't even
11 a motion pending to transfer to Culpepper, but the
12 reply brief says --

13 THE COURT: You mean Charlottesville.

14 MR. BENNETT: Charlottesville. I'm sorry.

15 THE COURT: How many divisions are there in
16 the Western District?

17 MR. BENNETT: Five, I believe, Your Honor.

18 THE COURT: One is Harrisonburg, right?

19 MR. BENNETT: Harrisonburg.

20 THE COURT: Isn't Culpepper in the
21 Harrisonburg Division?

22 MR. BENNETT: I believe it's in
23 Charlottesville when I did the tracking.

24 THE COURT: It is?

25 MR. BENNETT: It is, Your Honor, but I

1 wouldn't swear by it. But I understand that. And you
2 have Roanoke, Danville. Actually, I think there's
3 six. There's Abingdon. But, frankly, for my client,
4 Richmond is more convenient for her a number of
5 reasons. She's familiar with it and she's so
6 testified.

7 But what the defendant has failed to offer in
8 its brief and is even more certain -- well, clearly it
9 has failed to offer now is any reason why the
10 defendant would benefit from a move to
11 Charlottesville.

12 In this instance, it's apparent that their
13 move is not to anywhere. It's away from the Eastern
14 District of Virginia. It is away from the Richmond
15 Division. There is not even a suggestion that any of
16 the witnesses Equifax might need, third party
17 witnesses or otherwise, are in the Western District or
18 outside of this division within our state.

19 The only witnesses that Equifax identified we
20 attached in our supplemental filing are from out of
21 state. This court dealt with facts that were less
22 favorable to the party I was representing, the
23 plaintiff, in Mullins than this case. In Mullins,
24 Your Honor considered and properly adopted what is a
25 uniform rule. That the witness convenience standard

1 or threshold does not look to the convenience of the
2 parties as much as it looks to the convenience of the
3 third party witnesses. And all of the third party
4 witnesses, Judge, as well as rationally we would
5 expect most of the putative class would have a
6 connection to the Richmond Division.

7 The class is defined, and we're not there
8 yet, but the putative class definition is individuals
9 that have a City of Richmond General District Court
10 judgment. It's my understanding, and we're only early
11 in discovery, that the defendant will proffer
12 something unique. A unique defect in the City of
13 Richmond General District Court information-gathering
14 process. But regardless, the data gathering would
15 have come from a nexus of information and witnesses
16 surrounding the courthouse, blocks away from this
17 courthouse.

18 THE COURT: What do you know about the
19 residents of class who were sued and against whom
20 judgments were obtained in the City of Richmond in the
21 General District Court?

22 MR. BENNETT: We have not yet completed
23 our -- we have served discovery, and we have it
24 outstanding, both third party and individual -- I
25 mean, in defense discovery.

1 THE COURT: How many judgments are there?

2 MR. BENNETT: There are, I would say,
3 comfortably 100,000 plus.

4 THE COURT: 100,000?

5 MR. BENNETT: Yes, sir. Now, if the question
6 is how many class members? We don't know that. The
7 defendant has offered to stipulate generally to the --
8 well, we are hopeful that we will be able to obtain a
9 stipulation as to a number. We don't -- we have not
10 been proffered a number even privately or publicly
11 yet.

12 THE COURT: When someone is sued in the
13 General District Court in the City of Richmond, does
14 it have to be a venue provision that requires the City
15 of Richmond to be the proper venue?

16 MR. BENNETT: For any attorney to initiate a
17 collection action, it would have to be in the home
18 venue of the individual.

19 THE COURT: Under the Virginia law?

20 MR. BENNETT: Under federal law under the
21 Fair Debt Collection Practices Act.

22 THE COURT: So, presumptively, then all of
23 the members of the class, however numerous they would
24 be, or at least most of them would be residents of
25 Richmond, Virginia?

1 MR. BENNETT: Yes, sir.

2 THE COURT: All right. What did you say
3 about a defect in the General District Court's
4 procedures? Is that what you're saying? Is that a
5 defense in the case?

6 MR. BENNETT: No. I think the question is,
7 is this a problem that exists in the County of
8 Chesterfield General District Court? And it may. But
9 our discovery and our information to date is limited
10 and has only been with respect to the City of
11 Richmond.

12 THE COURT: You just confused me by reference
13 to the County of Chesterfield. You made some
14 statement that the defendants were taking the position
15 that they had as a defense that there was a defect in
16 the systems of the General District Court of the City
17 of Richmond. At least that's what I thought you were
18 saying. Am I wrong about that?

19 MR. BENNETT: It is what I was saying, and if
20 I could apologize to the defendant. These were
21 private conversations that the defendant has not taken
22 in a formal discovery pleading. And so I do not have
23 any on-the-record information as to --

24 THE COURT: Well, then I won't consider that.

25 MR. BENNETT: Yes, Your Honor.

1 THE COURT: Unless Mr. Goheen wants to agree
2 to it or raise it himself. And I'll let him worry
3 about that in his time, and I'm not going to try to
4 force him to do it. I just won't consider that.

5 MR. BENNETT: Thank you, Judge.

6 I would also, Judge, suggest that the third
7 parties at issue in this case are not -- I mean, most
8 important third party, the individual identified in
9 our pleadings, is the Virginia Supreme Court's point
10 person on -- and I'm trying to get his name because
11 it's a hard one for me. Ken Mittendorf,
12 M-i-t-t-e-n-d-o-r-f, the assistant director of the
13 Department of Judicial Information Technology for the
14 Executive Secretary of the Virginia Supreme Court.
15 This is the individual who is, and I've spoken with
16 and we've provided this information in my declaration,
17 who is almost solely responsible for the electronic
18 presentation of data in the Virginia case information
19 system. He's the individual that the vendors would
20 interact with. He's the individual that designs the
21 access systems and in terms of providing information
22 as to what electronic avenues were used.

23 THE COURT: He is in the Eastern District of
24 Virginia?

25 MR. BENNETT: He is. In fact, his office is

1 in the office of the Virginia Supreme Court Executive
2 Secretary, which is three blocks or less from here, a
3 block and a half. So you also have, to the extent it
4 was an individual case, the facts about the judgment
5 itself would come from the lawyer who represented the
6 Virginia Credit Union and the Virginia Credit Union.
7 I did not represent Ms. Soutter at the General
8 District Court level, but those witnesses or the
9 entity Virginia Credit Union is here in Richmond. Its
10 attorney is here in Richmond.

11 THE COURT: Are you saying that there are
12 100,000 of these erroneously issued judgments?

13 MR. BENNETT: No, sir. No. I'm sorry.

14 THE COURT: You're saying there are 100,000
15 judgments have been issued in the period of time at
16 issue?

17 MR. BENNETT: I am, Judge.

18 THE COURT: How many of them do you believe
19 are erroneously issued judgments?

20 MR. BENNETT: I believe that the majority of
21 those that have been terminated by satisfaction,
22 appeal or vacated are going to be erroneous.

23 THE COURT: How many of that, roughly?

24 MR. BENNETT: I don't know yet, Judge.

25 THE COURT: You don't even know an order of

1 magnitude?

2 MR. BENNETT: I mean, I believe it's
3 certainly going to be thousands, Judge.

4 THE COURT: Don't guess. If you don't know,
5 that's okay.

6 MR. BENNETT: Well, this is what I do know.
7 I do know that the courthouse provides a sheet each
8 month, provided when Equifax's vendor would use it, a
9 sheet each month with judgments that have been
10 terminated. And those sheets would be 8 1/2 by 11
11 with the City of Richmond's -- or something like 30 or
12 40 pages a month of judgments. But the reason why
13 it's complicated is that there are two elements
14 required. That, that is they have to have this
15 judgment that has been terminated, and there has to be
16 a consumer report issued in the time frame that
17 Equifax failed to pick that up.

18 The underlying or core difficulty is that
19 Equifax and its vendor devised a system to by
20 automated means pick up all the judgments, all the bad
21 stuff.

22 THE COURT: But they didn't pick up the
23 termination?

24 MR. BENNETT: Was no automated means to do
25 that.

1 THE COURT: Oh, goodness gracious. Okay.

2 MR. BENNETT: So needless to say, as
3 pleasant, I'm sure, as Charlottesville is, there's no
4 connection to it. There's no -- unless there's an odd
5 consumer who was sued in Richmond either improperly or
6 moved, we would not expect there to be any nexus with
7 Charlottesville. And to the extent that the defendant
8 would be concerned about our client's convenience, our
9 client has elected Richmond. Our client has stated in
10 her pleadings her preference for Richmond.

11 The defendant doesn't get to argue for the
12 convenience of the plaintiff. This court has
13 considered this, as numerous courts, but this court
14 most recently to my knowledge in the Mullins decision,
15 the question is the third parties.

16 In this instance, you have a nexus of class
17 members that we expect to be in this district and
18 division. You have all of the Virginia evidence with
19 the exception of my client, who would provide modest
20 testimony. There was a decision that recently was
21 rendered in the Fourth Circuit, and the name escapes
22 me, July 1, under the Fair Credit Reporting Act
23 considering -- I do know that it was out of the
24 District of Maryland.

25 MR. GOHEEN: Stillmock.

1 MR. BENNETT: Can we spell that?

2 MR. GOHEEN: S-t-i-l-l-m-o-c-k.

3 MR. BENNETT: Thank you. And Stillmock --

4 THE COURT: If you had gotten that off Lexis,
5 you would have gotten charged for it. You're going to
6 have to pay his billable hours on it to get that
7 citation from your opponent.

8 MR. GOHEEN: Count on it, Your Honor.

9 MR. BENNETT: That's why I couldn't get a job
10 with a quality firm. I couldn't remember the case
11 names. Only the general descriptions. International
12 Shoe is the only one I can remember and I don't hardly
13 remember what that says.

14 THE COURT: You probably think that's a case
15 involving the --

16 MR. BENNETT: Product liability, I assume.

17 THE COURT: The scale fell off of the shelf
18 in the New York subway. Is that what you think it is?

19 MR. BENNETT: I think or something similar.

20 THE COURT: Or maybe it's a shoe that fell
21 off a shelf.

22 MR. BENNETT: I was thinking a defective shoe
23 from my consumer mentality. But in the decision, the
24 question, and actually was considering whether you
25 could certify a class action under a -- there's a

1 provision of the Fair Credit Reporting Act that we
2 never brought, but -- and we think hopefully it will
3 be gone because it gives the FCRA a bad name, but
4 there was a change in the last amendment to the Fair
5 Credit Reporting Act, the second to last, that
6 requires the redacting of credit card receipts of the
7 account number and the expiration date.

8 So the cases Your Honor considered in the
9 certification battle in the Williams v. LexisNexis
10 matter, the annihilating damages cases and whether you
11 would knock someone out, were all cases -- the ones
12 favorable to us were all cases that were coming out of
13 courts that were faced with maybe a Chinese restaurant
14 that was being sued for a thousand bucks for every
15 credit card receipt that came out in two years for
16 failing to update its machine. And some courts were
17 considering whether to terminate those cases by
18 different means under Rule 23.

19 The Seventh Circuit ruled no. This court
20 refused in the majority opinion to accept that as
21 well. But the important thing is, Well, the question
22 in there was what type of evidence would you use to
23 consider statutory damages and whether a class was
24 ruled 23(f) reversal or -- reversal or denial of
25 certification.

1 And the Court has significant language that
2 the evidence that's used to determine the culpability
3 of the defendant is not plaintiff specific. That is
4 that it's not focused on -- for us to prove that there
5 was a willful violation of the statute, the evidence
6 of Donna Soutter is not the critical evidence.

7 The evidence of the defendant's conduct would
8 be obtained from other than simply the plaintiff. And
9 so under the applicability of this case, Judge, to the
10 extent that Donna Soutter pursues her willfulness
11 claim, which she is, even that evidence would not come
12 from her at all. I don't know that -- not only does
13 Donna Soutter have the right to say, I elect Virginia.
14 I've made the determination and don't need Equifax's
15 paternalistic protection, that Richmond is my choice
16 of venue. It is more convenient to me.

17 Equifax has not disclosed any witnesses
18 outside of the Richmond area that are in Virginia. It
19 does not seek, and we would oppose by other arguments,
20 to transfer it outside of the state. And I think that
21 the Court has ruled in previous matters the way that
22 we ask you to rule today, in the Mullins case
23 particularly. The convenience of these witnesses, the
24 nexus of the facts, and the law and discovery that
25 will occur in this courthouse and in this city, I

1 think, overwhelm any argument defendant would have if
2 any were made.

3 THE COURT: Mr. Goheen.

4 MR. GOHEEN: Thank you, Your Honor. Just two
5 very quick points. First, Mr. Bennett said something.
6 We're not trying to flee the court. Equifax has cases
7 in this court. Ten or twelve a year. We filed two
8 motions to transfer since our firm has been
9 representing Equifax, which is 3 1/2 years now. Since
10 the beginning of '07. One I just mentioned, Quigley,
11 which was by consent transferred to Alexandria. This
12 is the second one. Two out of however many cases that
13 we've had. So I'd respectfully --

14 THE COURT: You're not in headlong flight.

15 MR. GOHEEN: I'm not in headlong flight. No,
16 absolutely not. Here, just as in Quigley, we don't
17 have a plaintiff or a defendant that is a resident of
18 this district or division. That's the basis for the
19 motion. The other cases that have been filed, to our
20 knowledge they live in the district. There's not a
21 big basis for a transfer motion.

22 I respectfully reject that particular
23 connotation as to why we filed this. That's just not
24 right. And the final thing I would say is -- what Mr.
25 Bennett said in response to Your Honor's question

1 about was there jurisdiction over Ms. Soutter. If
2 that's correct and that was the reason for the
3 erroneous entry of the judgment, if I understood that
4 correctly, well, that seems to be the height of irony.
5 There was no jurisdiction over her in Richmond, so she
6 got the judgment. So now let's go file suit in
7 Richmond embracing the jurisdiction.

8 THE COURT: They are two different courts,
9 though.

10 MR. GOHEEN: I understand, Your Honor.
11 You're right. They are different courts, but I do
12 believe that there's an irony there that suddenly
13 Richmond is a wonderful venue when two or three years
14 ago, whatever this occurred, the General District
15 Court did not have jurisdiction over her. So now
16 she's embracing Richmond. I do believe there's an
17 irony there.

18 Finally, all the things that Mr. Bennett just
19 said, as I said, that would counsel in favor of going
20 to Atlanta. We're not making that motion, but we
21 certainly think a middle ground, let's go where the
22 plaintiff is, there is an actual damages claim in the
23 case. Presumably, friends and family witnesses will
24 be relevant witnesses. We haven't gotten into
25 discovery yet to confirm that. But Your Honor does

1 enough FCRA cases to know there's going to be
2 witnesses there in addition to Ms. Soutter. So that
3 is where this case should be. Thank you, Your Honor.

4 THE COURT: All right. The matter is before
5 the Court on a motion of Equifax Information Services,
6 LLC to transfer the venue to the Western District of
7 Virginia.

8 Originally, the motion sought transfer to
9 Roanoke, Virginia, because there was another plaintiff
10 by the name of Webb who was in Roanoke. The Webb
11 matter has been settled and he will be out of the case
12 when the order is entered later in the day or
13 tomorrow. And his case is being transferred to the
14 Eastern District of Pennsylvania.

15 Ms. Soutter filed a class action complaint on
16 behalf of herself and others similarly situated. The
17 allegation is that Equifax violated the Fair Credit
18 Reporting Act which provides, *inter alia*, that
19 whenever a consumer reporting agency prepares a
20 consumer report, it shall follow reasonable procedures
21 to assure maximum possible accuracy of the information
22 concerning the individual about whom the report
23 relates.

24 She is bringing a class on behalf of herself
25 purportedly and all people who have suffered a

1 negative credit impact due to erroneously reported
2 judgments in the General District Court for the City
3 of Richmond.

4 The motion to transfer is based on the fact
5 that Soutter does not live or work in the Eastern
6 District, but instead lives in Culpepper, which is in
7 the Western District. And that Equifax is in Atlanta,
8 Georgia, and, therefore, neither party is in the
9 Eastern District of Virginia.

10 The motion is brought under 28 U.S.C. Section
11 1404(a) under which for the convenience of parties and
12 witnesses in the interest of justice the district
13 court may transfer a civil action to any other
14 district or division where it might have been brought.

15 The Court is obligated to inquire into
16 whether the claims might have been brought in the
17 transferee form and whether the interest of justice
18 and convenience of the parties and witnesses warrant
19 transfer to that forum.

20 The plaintiff's choice of forum is generally
21 entitled to substantial deference. However, that
22 deference or the amount of deference that is due to
23 the plaintiff's choice is considerably less as
24 numerous decisions of this court have indicated when
25 the choice is of a forum which is not the plaintiff's

1 home forum, and most particularly is deference at its
2 low point when the cause of action or claim has
3 nothing really to do with the forum of selection.

4 It's clear that this case could have been
5 brought in the Western District of Virginia in either
6 Roanoke or Charlottesville. I believe what happened
7 is that Soutter filed the case. Webb joined it in an
8 amendment. Webb is out of it, so I doubt that Roanoke
9 would have been a forum where the case could have been
10 brought originally. Charlottesville is a forum where
11 the case could have been brought originally.

12 Once you have that inquiry satisfied, you
13 look at several factors:

- 14 (1) Ease of access to sources of proof;
15 (2) the convenience of the parties and the
16 witnesses;
17 (3) the cost of obtaining the attendance of
18 witnesses;
19 (4) the availability of compulsory process;
20 (5) the interest in having local
21 controversies decided at home;
22 (6) in diversity cases, the Court's
23 familiarity with the applicable law; and
24 (7) the interest of justice.

25 Factor 6 is not implicated in the comparison

1 because this action arises under federal law.

2 Principal among the precepts to consider are
3 the plaintiff's choice of forum, witness convenience,
4 access to sources of proof, party convenience, and the
5 interest of justice.

6 The first three of the first enumerated
7 factors concern convenience. The latter four concern
8 the administration of justice.

9 Courts often give less weight to the
10 plaintiff's choice of forum in class action cases,
11 particularly when geographically dispersed plaintiffs
12 are joined together in a class action. No one
13 contests the obvious fact that this could have been
14 filed in the Western District of Virginia, in
15 particular Charlottesville.

16 The weight of the convenience factors seems
17 clearly to fall on the side of allowing the action to
18 proceed in the Eastern District of Virginia. The
19 proof, the parties, and the witnesses are in four
20 locations: Culpepper, which is where the plaintiff
21 keeps her records, Richmond, where the judgment in
22 question was entered and where some of the other
23 witnesses who will be instrumental in ascertaining the
24 substance of the case are situate, Virginia Beach,
25 where several witnesses reside, and Atlanta where

1 Equifax is situate.

2 Each of those four locations favors Richmond
3 over Charlottesville in the transfer analysis that the
4 Court made in Byerson, which is the case that forms
5 the basis for the six articulated factors.

6 Administration of justice is the fourth
7 factor or is an important factor. The fourth Byerson
8 factor, availability of compulsory process, weighs
9 against transfer. The plaintiff identifies a number
10 of witnesses in the Eastern District both in Richmond
11 and Virginia Beach on whom she intends to rely.
12 Equifax dismisses the expected testimony of those
13 witnesses as cumulative or not likely to be disputed
14 or not likely to be significant, but Equifax has
15 identified no witnesses other than the plaintiff who
16 hailed from the Western District. Thus, in any event,
17 the availability of compulsory process counsels in
18 favor of the Eastern District.

19 The fifth and seventh Byerson factors allow
20 Equifax to present some colorable arguments in favor
21 of Charlottesville, but transferring to
22 Charlottesville would cut the distance between the
23 plaintiff's home and the court by a relatively small
24 measure. These factors are, at best, slightly
25 favorable to Equifax.

1 In total, the Byerson factors weigh even more
2 decisively against transfer in context of the case
3 that is brought in this case and this complaint and
4 the proposed class, which likely will consist mostly
5 of people who live in Richmond or in the venue area
6 for the General District Court for the City of
7 Richmond where the judgments at issue were entered.

8 That's going to be particularly significant
9 in the class action when it comes to securing class
10 participation and other information. The witnesses
11 identified by the plaintiff respecting the City of
12 Richmond's system and the administration of the system
13 and the Virginia court system for electronic
14 information are located in Richmond.

15 On the whole, it seems to me that this case
16 is properly venued here, and it is appropriate to keep
17 it here because all of the factors under the statute
18 counsel in favor of keeping it here and none of them
19 really push the calculus in any other direction.

20 It will be much better for the parties and
21 the witnesses to be here. The ease of access to
22 certain sources of proof, particularly those relating
23 to the entry of judgments, will be here. The cost of
24 obtaining the attendance of witnesses likely will be
25 less. The availability of compulsory process counsels

1 in favor of this forum, and the interest of justice
2 generally counsels in favor of this forum.

3 So the motion to transfer the Soutter case to
4 the Western District of Virginia will be denied, and
5 that's particularly appropriate where Charlottesville
6 has no nexus with the case except that it is somewhat
7 proximate. Culpepper is in that division and that
8 district and the plaintiff lives in Culpepper, but
9 there's not a great deal of difference between the
10 distance from Culpepper to Charlottesville and
11 Culpepper to Richmond as the record shows.

12 Is there anything else that needs to be done?

13 MR. BENNETT: Your Honor, may I approach?

14 Nothing else with respect to this motion.
15 There is one administrative issue I at least want to
16 raise related to discovery. We have -- there is a
17 motion that the defendant has filed to enlarge its
18 response time to discovery after meeting and
19 conferring with us, and we consented to that, and I
20 anticipate there being an exchange of orders for
21 signature shortly, and Your Honor will receive that.
22 But that, of course, would not impact the Court.

23 The defendant has also represented to us it
24 is diligently attempting to obtain discovery
25 information and provide dates for its witnesses. And

1 our position with respect to requests to accommodate
2 those difficulties that the defendant may be having
3 has been, given that our discovery cutoff is in the
4 middle of October, if the defendant will move the
5 Court on defendant's motion to which we would consent.

6 THE COURT: I am lost. What are you talking
7 about?

8 MR. BENNETT: The parties, I think, or the
9 defendant has leave, but both parties in spirit would
10 be asking the Court to move the discovery deadline,
11 which is currently set mid-October.

12 THE COURT: Until when?

13 MR. BENNETT: Sixty days.

14 MR. GOHEEN: What we have, Your Honor, is, as
15 Mr. Bennett just said, we are diligently gathering,
16 attempting to gather, information. We are also trying
17 to navigate availability.

18 THE COURT: Availability of whom?

19 MR. GOHEEN: Witnesses for deposition.

20 THE COURT: From where? Whose witnesses?

21 MR. GOHEEN: Equifax's witnesses.

22 THE COURT: They are going to be available
23 real quickly. July to August is one month. August to
24 September is another month. September to October is
25 three months. In that 90-day period, they are going

1 to be available.

2 MR. GOHEEN: I'm not saying they're not, Your
3 Honor.

4 THE COURT: So let's get them on the front
5 end, not the back end.

6 MR. GOHEEN: That's what we're attempting to
7 do, Your Honor.

8 THE COURT: Why do we need to move the
9 discovery cutoff?

10 MR. GOHEEN: Well, as I said, I think we've
11 got availability, but we've got scheduling issues and
12 other sorts of things with the documents that I
13 anticipate we're going to be producing, it's going to
14 be difficult. They have a cutoff, I don't know
15 exactly the date, but I think it's something like
16 August 16 maybe for their expert disclosure and so
17 forth and so on.

18 So we're trying to get all these depositions
19 taken in the next four weeks. And that's a tall task
20 with all due respect. And we're trying to do it and I
21 think we can.

22 THE COURT: How many depositions are you
23 talking about?

24 MR. BENNETT: There's four right now.

25 THE COURT: Four depositions in four weeks

1 and you think that's a tall task? I can guarantee you
2 one thing. Unless the method of taking depositions
3 has changed a lot since I did it, you can do four in
4 four weeks.

5 MR. BENNETT: Yes, sir. The challenge that I
6 expect is that the initial witnesses that the
7 defendant -- well, let me instead of targeting
8 Equifax. In these Fair Credit Reporting Act cases, it
9 is not uncommon that the witnesses that the defendant
10 identifies, the employees the defendant proffers, are
11 not the nuts and bolts witnesses. They are the party
12 line witnesses. One of the witnesses that is
13 identified, Alicia Fluellen, is the witness that
14 testifies --

15 THE COURT: Even I know what she testifies
16 to. She's testified at every case we've had.

17 MR. BENNETT: That's right. And we have not
18 even noticed her deposition, for example. But the
19 point being, the other witnesses, of the five that
20 have been identified, we have noticed four of those
21 witnesses. They are now -- we have agreed dates. As
22 of this early afternoon we came to an agreement of
23 August 11 and 12, that our expert witness disclosure
24 date is the 16th. The defendant and the plaintiff
25 can work through that.

1 THE COURT: What is the expert about?

2 MR. BENNETT: Apparently, currently the only
3 issue, not the only, but the defendant's defense will
4 be how difficult it is to ascertain the judgment or
5 termination of judgment information. So we will have
6 a witness that says it isn't difficult. But that's --

7 THE COURT: The statute has made that
8 decision. You do it. If you're going to be in this
9 business, do you it. And you figure out how to do it.
10 And don't give me any sob story about how hard it is
11 to do it. That's the bottom line. Congress made that
12 decision, didn't it?

13 MR. BENNETT: Yes, sir.

14 THE COURT: We're not free to revisit that.
15 They have got to do it. It's that simple.

16 How many billions of dollars does Equifax
17 make in doing this, Mr. Goheen? They make a lot of
18 money, don't they?

19 MR. GOHEEN: I don't know if it's in the
20 billions, but it's a significant sum.

21 THE COURT: Well, it's at least in the
22 hundreds of millions if I remember from previous
23 cases.

24 MR. GOHEEN: That's likely fair, Your Honor.

25 THE COURT: Don't run that one up the flag

1 pole too far because I believe that by the dawn's
2 early light it may have a lot of holes in the flag
3 after a little bit of shooting. Come on. That's not
4 much of a defense. Is that all this is about?

5 I don't understand the problem here. You
6 have four witnesses. I don't know why you need to
7 move -- if you need to move anything, move the expert
8 disclosures.

9 MR. BENNETT: Yes, sir. I think that's what
10 we'll likely do. We will continue to -- but I think
11 this conversation is me letting the Court know so that
12 we don't appear in front of you in September for the
13 first time when the defendant says we've had a bunch
14 of people gathering the records and the documents and
15 we now have to get this other task performed. I want
16 to give --

17 THE COURT: What you're saying is they don't
18 designate the right witnesses to testify. And that's
19 not acceptable. You designate the right people.

20 MR. GOHEEN: We are designating the right
21 people.

22 THE COURT: They can work in the evenings.
23 They can work on the weekends. They can get these
24 things done in due course. And then you'll know who
25 it is that's collected the documents and who has the

1 knowledge. You pony up the right people, then we
2 won't have any problem.

3 The idea that you have to have two rounds of
4 depositions. One of people who are designated who
5 don't really know anything and then they identify who
6 does know, and then you've got to go do that is not
7 the way that this ought to be done. And I've dealt
8 with this before, and we're not going to have that
9 kind of problem, I don't think, in this case.

10 You just tell Equifax, Mr. Goheen, they have
11 to identify all the people who know what they are
12 doing and who have the knowledge of the case and they
13 have to do it promptly.

14 This case was filed when? How long ago was
15 this case filed?

16 THE CLERK: April 30, Your Honor.

17 THE COURT: April. This isn't a complicated
18 case. It's not a case of great difficulty. The real
19 problem is going to be trying to figure out what
20 happened to the judgments up here and who the class
21 is.

22 MR. BENNETT: Yes, sir.

23 THE COURT: And if you're going to have --
24 who is your expert? An industry usage person or what?

25 MR. BENNETT: A retired General District

1 Court, Civil Division, clerk from a different
2 jurisdiction.

3 THE CLERK: Your Honor, I misspoke. I looked
4 at the wrong docket sheet. It was filed February 17.

5 THE COURT: You've had even more time. So
6 they have known about it, Mr. Goheen. You get them
7 saddled up and ride them hard.

8 MR. GOHEEN: We're doing that, Your Honor.
9 We are working diligently gathering people with
10 relevant knowledge and with relevant documents. We
11 are doing that, Your Honor.

12 THE COURT: This is July 15. Why can't you
13 get all that done by July 30?

14 MR. GOHEEN: The company is preparing to
15 undertake a two-week trial beginning next week with
16 some of these same witnesses. And we have, as I said,
17 witness vacations and other international travel,
18 on-the-job, job-related, of some of the witnesses that
19 Mr. Bennett said --

20 THE COURT: That can get rescheduled.

21 MR. GOHEEN: We have reached an agreement on
22 the dates for these four witnesses, though, Your
23 Honor.

24 THE COURT: But I'm not interested in the
25 four witnesses. I want all of the witnesses, every

1 one of them you're going to use, identified.

2 MR. GOHEEN: They have been, Your Honor.

3 THE COURT: And you're going to take their
4 depositions. Set a schedule. This international
5 travel for business is not going to cut it. They have
6 known this case was in the works since February. They
7 could have worked their schedule around the deposition
8 plans and the deposition schedule. Equifax must learn
9 that it needs to put these cases in high priority.

10 Where is your two-week case pending?

11 MR. GOHEEN: San Francisco, Your Honor,
12 Federal Court.

13 THE COURT: Okay. So they are not going to
14 be out there for the whole two weeks, are they?

15 MR. GOHEEN: I doubt it, Your Honor.

16 THE COURT: Yeah. So tell them to come back
17 and they will be Johnny-on-the-spot with information
18 of all kinds, and let them get to work. I'm not going
19 to extend the discovery cutoff. You-all have to get
20 moving on it. So don't tender the order.

21 If you want to change your expert disclosure
22 dates within the discovery cutoff, then you can do
23 that. But there's no sense in -- it sounds to me like
24 we're going at a snail's pace here and we need to pick
25 it up. Both sides. Okay?

1 MR. BENNETT: Yes, sir.

2 MR. GOHEEN: Yes, Your Honor.

3 THE COURT: Thank you very much. We'll be in
4 adjournment.

5

6 (The proceedings were adjourned at 3:54 p.m.)

7

8 I, Diane J. Daffron, certify that the
9 foregoing is a true and accurate transcription of my
10 stenographic notes.

11

/s/

12

DIANE J. DAFFRON, RPR, CCR

DATE

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